IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960.

No.

ELI FRIEDLANDER, BERTHA A. LLOYD, CARL F. LLOYD, JAMES J. PRINCE and BERNARD R. VAN HARREN, d/b/a LLOYD'S PROPERTY OWNERS ASSOCIATION OF CHICAGO and LLOYD REALTY COMPANY,

Petitioners,

vs.

THE CHICAGO BAR ASSOCIATION, an Illinois Corporation, not for profit, STUART C. ABBEY, MANDEL L. ANIXTER, DAVIS P. BUZANE, RICHARD L. KAHN, JOHN LIGTENBERG, JOHN T. LOVE, JOHN CADWALADER MENK, JAMES T. MULLANEY, CURTIS F. PRANGLEY, and JOHN A. WATSON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

ROBERT J. NOLAN
105 South LaSalle Street
Chicago 3, Illinois
Attorney for Petitioners

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Eli Friedlander, Bertha A. Lloyd, Carl F. Lloyd, James J. Prince and Bernard R. Van Harren, d b a Lloyd's Property Owners Association of Chicago and Lloyd Realty Company pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above entitled cause on May 23, 1950.

OPINION BELOW:

The Supreme Court of Illinois refused a Petition for Leave to Appeal the decision of the Appellate Court of Illinois, First District, reported at 24 Ill. App. 2d 130, which affirmed a trial court injunction forbidding defendants to continue their business. A copy of the Appellate Court Opinion and the Supreme Court order are attached hereto as Appendix A and B.

JURISDICTION:

The Illinois Supreme Court refused leave to appeal the decision of the Illinois Appellate Court of Illinois, First District, on May 17, 1960. A Motion to reconsider was filed by the Petitioners and denied on May 20, 1960. The final mandate from the Supreme Court to the Appellate Court of Illinois, First Disfrict, is dated May 23, 1960.

The statutory provision believed to confer jurisdiction on this Court to review the judgment in question is Title 28, U.S.C. Section 1257 (3) on the ground that a right, title, privilege or immunity is claimed under the Constitution of the United States.

QUESTION PRESENTED FOR REVIEW:

Does the denial by a State Court of the common law principle of *Res Judicata* and the enjoining of a business activity engaged in for 25 years since previously found proper by that same Court constitute a deprivation of property without due process and a denial of equal protection of the laws in violation of the guarantees of the 14th amendment to the United States Constitution?

STATEMENT OF THE CASE:

The Respondents herein were practicing lawyers and members of the Chicago Bar Association Committee on Unauthorized Practice of Law who in their individual capacity and as members of the Chicago Bar Association Committee sought injunctive relief against the Petitioners charging them with the unauthorized practice of law. The complaint alleged four types of activity alleged to be the practice of law but this petition is concerned only with practice before the Board of Tax Appeals and in that respect the Complaint charged that each of said Defendants, acting as partners of Lloyd's Property Owners Association, had entered into contracts of employment with many property owners which provided that said partners would file complaints to the Assessor's valuation of real estate before the Board of Appeals of Cook County, Illinois, and that said partners would receive as payment therefor ½ of the amount of any savings in general real estate taxes as a consequence of any reduction in the amount of such valuation; that they do not employ any attorney to represent the property owners before said Board of Appeals, but prepare and file all complaints against said valuations and appear and conduct hearings before the Board of Appeals in the name of Lloyd's Property Owners Association of Chicago, as agent for said property owners, and have collected many thousands of dollars as fees for legal services in connection with said valuation objections and have retained the entire amount thereof for the sole use and benefit of said partners. (Appendix D, p. 12a, ¶23)

That in so doing they are each engaged in the practice of law without a license and are each guilty of fraudu-

lent imposition upon the Courts of the State of Illinois as well as the people of said State. (Appendix D, p. 15a, ¶ 28.)

The Defendants answered (Appendix E, p. 15a) insofar as applicable to Board of Tax Appeals matters) by denying that any of them as a partner in said partnership or otherwise, has ever been engaged in, or is now engaged in the practice of law, or that they or any of them has solicited, performed, furnished or rendered legal services or advice and denied that they, or any one or more of them, have ever charged or collected fees for legal services.

The Defendants further answered (¶ 23, Appendix E, p. 16a) that matters handled by them before the Board of Appeals are handled in non-judicial proceedings and involve only the valuation of property, and do not involve legal questions, and do not require the possession or use of legal skill and knowledge. They denied that they have ever received any fees for legal services in connection with such matters and denied that the valuation of property is the practice of law.

They denied that with respect to matters before the Board of Appeals of Cook County, Illinois, they had been guilty of fraudulent imposition upon the said Board of Appeals or the people of the State of Illinois.

In handling matters before the Board of Tax Appeals the Defendants stated they rendered the following described services: (¶ 27, Appendix E, p. 16a)

> (1) Ascertained classification of assessed property on records of the County Assessor. (The Assessor's classification of property relates to the physical attributes of the property assessed, such as age, location, kind of construction including materials used, size of lot, size of building, number of rooms finished, number of rooms unfinished, number of fireplaces,

ductions in valuation by pointing out errors such as: Erroneous classification of a house according to number of rooms without taking into consideration the fact that two rooms were attic rooms and were unfinished; erroneous specifications of the number of fireplaces in a house; failure to make adequate allowance for depreciation and obsolescence of improvements, factors affecting both having been underestimated; erroneous assessment of frame addition to brick building at same unit value as the brick portion of the structure; failure to give consideration to absence of a basement; erroneous classification as to number of tiled baths; erroneous classification of shingle roofed building as tile-roofed building and erroneous classification of houses as "Modern residences" when in fact they lacked many modern features.

They further stated that in the course of the handling of these matters no legal questions are involved, no services requiring legal knowledge or skill are rendered, and no lawyers are employed but that many of these matters are referred to the Defendants by reputable and competent lawyers engaged in the practice of law in Cook County.

They summarized their business by stating that in a recent year the Defendants obtained reductions of taxes on 351 parcels of real estate, their average compensation was $59.43 per parcel, the smallest compensation was $5.03, and the largest was $1,354.22.

Further answering the Defendants (paragraph 31 of Answer Appendix E, p. 19a) pleaded that at the December term A.D. 1932 of the Supreme Court of Illinois the Chicago Bar Association and the persons who were then its Committee on Unauthorized Practice presented to the Supreme Court of Illinois and filed in said Court a certain information in and by which the Chicago Bar Association

and the then members of its Committee on Unauthorized Practice made certain charges against Clyde F. Lloyd and Frank P. Lloyd, doing business as Lloyd's Property Owners Association of Chicago, to whose business and partnership the Defendants herein have succeeded, which charges so made against said Clyde F. Lloyd and Frank P. Lloyd were in all pertinent respects identical with the charges made by said Chicago Bar Association and the present members of its Committee on Unauthorized Practice against these Defendants in this case now pending before this Honorable Court. In said information proceeding, said Chicago Bar Association and the then members of its Committee on Unauthorized Practice prayed that said Supreme Court of Illinois might take action which was described in the prayer of said information proceeding in the words and figures following: "Your relators therefore pray that said respondents, Clyde F. Lloyd and Frank P. Lloyd, may be required to make full and correct answer to this information and that said respondents may be perpetually enjoined and restrained from engaging in the practice of law in the State of Illinois and from performing either directly or indirectly acts or services for any person or persons whomsoever, similar in character to those hereinbefore alleged, and from charging and collecting fees, commissions or payments in any form in return for any legal services rendered or to be rendered by said respondents or their attorneys; that said respondents show cause, if any they have, why they should not be punished for contempt of this Court for the commission of the offenses, and each of them, hereinbefore set forth and that such further order or orders may be entered as to this Honorable Court may seem meet." Answer was duly filed on behalf of said Clyde F. Lloyd and Frank P. Lloyd, respondents in said information proceeding and said proceeding was

referred to the Honorable William A. Doyle, a Master in Chancery of the Circuit Court of Cook County as Commissioner of the Supreme Court of Illinois for the taking of evidence and the submission of his reports and recommendations. The evidence and stipulations introduced before said Commissioner showed the manner in which the respondents in said cause carried on their business, which was the same in which these Defendants now carry on the same business. Said Commissioner, upon the conclusion of the hearings before him, rendered his report in which he found that the charges made against said respondents had not been sustained and recommended the discharge of the rule and the dismissal of the cause. Thereafter on October 22, 1934, the Supreme Court disposed of the case by the following oral announcement made through its Chief Justice:

> "In this case several motions have been filed. Among them are motions by relator that Charles Levifon be substituted as attorney and that objections to the Commissioner's report stand as exceptions. These motion are allowed.
>
> "There is a further motion by respondents to confirm the Commissioner's report and to discharge the rule. The Court has considered this motion. We find that the facts stated in the Commissioner's report, taken with the stipulations, are sufficient to sustain the findings of the Commissioner. The recommendations of the Commissioner are therefore approved by this Court, the rule is discharged and the cause dismissed."

The Plaintiffs presented no proof but filed a motion to strike (Appendix F) which was allowed by the Trial Court which entered a Decree (Appendix G) which recited that:

The Court had jurisdiction of the subject matter and of the parties;

The motion of the Plaintiffs to strike the amended answer of the Defendants is hereby sustained, and the said amended answer is stricken;

The cause of action contained in the Plaintiffs' complaint is meritorious, and the Plaintiffs are entitled to receive the relief prayed for in the complaint;

The Defendants, Eli Friedlander, Bertha A. Lloyd, Carl F. Lloyd, James J. Prince and Bernard R. Van Haren, doing business as Lloyd's Property Owners Association of Chicago and Lloyd Realty Company, and their agents and employees, be and are hereby permanently restrained and enjoined from:

(1) Directly or indirectly engaging in the practice of law;

(2) Directly or indirectly fomenting or soliciting litigation;

(3) Directly or indirectly performing, furnishing and rendering legal services and advice;

(4) Directly or indirectly charging and collecting fees for legal services;

(5) (Appendix G, p. 24a) Rendering and continuing to render legal services in connection with the preparation and filing of complaints to the Assessor's valuation of real estate before the Board of Appeals of Cook County, Illinois, and conducting hearings before said Board of Appeals in connection with said valuation complaints, and receiving fees for their services in the representation of property owners before the Board of Appeals.

JUDGMENT OF THE COURT BELOW.

The Copy Of The Judgment Of The Court Below:

Appendix (B) hereto is a copy of the judgment of the State Supreme Court denying leave to appeal. Appendix C is the order denying the Motion for reconsideration.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. By enjoining Petitioners from engaging in a business previously sanctioned by it the Illinois Court has deprived them of property without due process of law.

2. By precluding Petitioners from practice before the Board of Tax Appeals the Illinois Court has denied them the equal protection of the law.

3. The question of what constitutes the practice of law is of general interest and an authoritative statement by this Court will remove much doubt and confusion now existing.

ARGUMENT.

1. BY ENJOINING PETITIONERS FROM ENGAGING IN A BUSINESS PREVIOUSLY SANCTIONED BY IT THE ILLINOIS COURT HAS DEPRIVED THEM OF PROPERTY WITHOUT DUE PROCESS OF LAW.

In October, 1934, the Illinois Supreme Court gave the sanction of its approval to the business carried on by these Defendants. *People Ex Rel. Chicago Bar Association* v. *Lloyd* (Illinois Supreme Court #21768) In December of 1934 in another opinion (*North Chicago Congregation* v. *Board of Appeals*, 358 Ill. 549) that same Court held that the Board of Appeals was not a judicial body. Neither of these decisions insofar as they affect the right of laymen to practice before that Board was disturbed in any way for the twenty-five years following. Until 1960, therefore, it would seem that the Illinois Courts were following the admonition of this Court that;

> "Private right and public welfare unite in demanding that a question once adjudicated by a court of competent jurisdiction shall, except in direct proceedings to review, be considered as finally settled and conclusive upon the parties. *Interest reipublicae at sit finis litium.*" (*Fayerweather* v. *Ritch*, 195 U. S. 276 at 299)

The Illinois Court, however, in the decision of the instant case has ignored that principle and swept the protection of the earlier decisions from under the Petitioners and as a direct consequence will destroy the only business the petitioners know.

During the intervening quarter of a century the Petitioners were engaging in the business of evaluating property for tax purposes; perfecting their knowledge

of the subject matter and were building up a clientele so that at the time this case was filed they had 351 separate hearings in a year which resulted in a reduction of taxes for small taxpayers. (par. 27 of Answer-Appendix E, p. 16a)

During this period in Illinois the Board of Tax Appeals adopted rules of procedure which allowed accountants, architects, real estate appraisers, engineers or other specialists (agents) to practice before it (see rules of procedure Appendix H, p. 25a) and Courts of Appeals around the country recognized and protected the right of laymen to appear in tax and other matters before Administrative bodies. *Merrick* v. *American Security and Trust Co.* 107 Fed. 2d 271, 278; *Brooks* v. *Mandel Bros. Co.* 54 Fed. 2d 992, 995 *Tanenbaum* v. *Higgins* 180 N.Y.S. 738; *Moore* v. *Gibbs* 205 Miss. 865; *Groninger* v. *Fletcher Trust Co.* 220 Ind. 202; *State* v. *Childs* 139 Neb. 91; *Carr* v. *Stringer* (Tex.) 171 S.W. 2d 920.

There is nothing in the record here to indicate that any client of the Petitioners was dissatisfied with the representation given him during all this period and there is no charge that the Petitioners have (aside from not being lawyers) done anything to prejudice the rights of the public and the governing bodies.

Unless the fact they are not lawyers is a sufficient reason for putting the petitioners out of business the act of the Illinois Court was unreasonable and arbitrary.

Unless the principle of *Res Judicata* is not part of the "law of the land" the act of the Illinois Court is violative of "Due Process."

Is the business owned and conducted by the Petitioners *property* within the protection of the Fourteenth Amendment to the U. S. Constitution?

Numerous opinions of this Court answer this question in the affirmative. Since the leading case of *Truax* v. *Raich*, 239 U. S. 33 holding that the right of a restaurant dishwasher to use his talents to earn a livelihood was property, this Court has consistently held that a business, profession or right to work is property entitled to the protection of the Federal Courts. *Bratton* v. *Chandler* 260 U. S. 110; *Pierce* v. *Society of the Sisters of the Holy Name* 268 U. S. 510; *Goldsmith* v. *Board of Tax Appeals*, 270 U. S. 117; *Liggett Co.* v. *Baldridge*, 278 U. S. 105; *Schware* v. *Board of Bar Examiners*, 353 U. S. 232.

Perhaps the language of the Court in the recent case of *Konigsberg* v. *State Bar of California* 353 U. S. 252, is the most apt (pp. 257,58).

> "The Committee's action prevents him from earning a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer."

The Petitioners here have spent years of their life developing a business and perfecting themselves in handling it only to be told that these efforts go down the drain. There is no way for them to sell either their business or their knowledge of state taxation without violating the order of the Illinois Courts. It is submitted that they have been deprived of *property*.

Was due process given and if not, was the raising of the guarantee timely enough to permit this Court to grant the Writ of Certiorari?

It is axiomatic that the prohibition of the 14th Amendment applies to Judicial proceedings as well as Legislative or Executive action. This Court recognized that principle in *Chicago, Burlington & Quincy R.R.* v. *Chicago* 166 U.S. 226 where this Court stated (page 234):

> "But a State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment."

In *Fayerweather* v. *Ritch* 195 U. S. 276 this Court held that *Res Judicata* was a principle of law which was part of Due Process and litigants were entitled to have it recognized.

In *Truax* v. *Corrigan* 257 U. S. 312 it held that an Arizona Statute similar to a Congressional Act could be held invalid because the State Court interpreted it in a manner which violated Due Process, whereas the Congressional Act was interpreted differently by the Federal Courts and held valid. (Pages 340-341 of 257 U.S.)

When the action of the highest Court of a State is the action which violates the individual's rights, the first opportunity the individual has to raise the Constitutional question is after those rights have been violated. Thus in the present case the Petitioners, having raised the defense of *Res Judicata*, were not deprived of due process until the defense was ignored by the Illinois Supreme Court.

The timeliness of the point is similar to the raising of the Constitutional questions in the recent cases of *In re Summers* 325 U. S. 561; *Schware* v. *Board of Bar Examiners* 353 U. S. 232; *Konigsberg* v. *State Bar* 353 U. S. 252. In each of those cases the act of the State Supreme Court was the violation of Due Process and this Court granted Certiorari for the purpose of protecting citizens against a State denial of the same.

2. BY PRECLUDING PETITIONERS FROM PRACTICE BEFORE THE BOARD OF TAX APPEALS, THE ILLINOIS COURT HAS DENIED THEM THE EQUAL PROTECTION OF THE LAW.

As stated earlier the Petitioners were not accused of failing to properly represent the persons whose agent they were before the Board of Tax Appeals. The record shows that there were no complaints from persons they represented and that they successfully reduced taxes for 251 clients in a single year. The charge made against them is they are not lawyers.

"Equal protection of the law" is a phrase that means that members of a group cannot be discriminated against because of their membership, but it also means that individuals cannot be discriminated against because of their failure, inability or lack of desire to join the group. In other words, equal protection is not only to be extended to persons on whom a label such as Democrat, Catholic, Negro or Union member can be affixed, it also extends to individuals who belong to no class unless it could be called non-political, non-sectarian, non-union etc.

In *Gompers v. Bucks Stove & Range Co.* 221 U. S. 418 this Court stated (page 439):

> "But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have acquired a vast power, in the presence of which the individual may be helpless. This power when unlawfully used against one, cannot be met except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution, or by standing on those rights and appealing to a Court of Equity. When such appeal is made it is the duty of government to protect the one against the many as well as the many against the one."

The lawyers gathered together in Bar Associations have acquired a vast power and since;

> "Judges have nearly all been practitioners and they are naturally apt to retain the loyalties and prejudices of their old guild and to give high value to claims and qualities of their group." *Merrick v. American Security & Trust Co.* 107 Fed. 2d 251, (272) Cert. Denied 308 U. S. 625.

it is encumbent upon members of that group to make a soul searching effort to protect other individuals outside their group from being discriminated against and to see that such individuals get equal protection of the law.

In the instant case there was no showing that lawyers could perform a greater service for the public than the Petitioners. The only showing here is that the Petitioners do not belong to the group whose members claim a monopoly on the business of evaluating real estate for tax purposes. Punishment for not "belonging" is denial of equal protection of the law.

3. THE QUESTION OF WHAT CONSTITUTES THE PRACTICE OF LAW IS OF GENERAL INTEREST AND AN AUTHORITATIVE STATEMENT BY THIS COURT WILL REMOVE MUCH DOUBT AND CONFUSION NOW EXISTING.

The legal profession is not so destitute as to require it to stretch its concepts of what constitutes legal skill and ability or so entrenched in public confidence that it can hold itself out as the custodian of all knowledge. This attempt to inject itself into the problems presented by the valuation of real estate to the exclusion of real estate brokers and appraisers, engineers, accountants, architects, and other specialists who have done such work all their adult life can only result in giving thoughtful members of the public doubts about the ability of members of our pro-

fession to assimilate the knowledge we profess to have; or doubts about the wisdom of a system which permits a profession to lift itself by its own bootstraps through monopolistic practices. It is time to stop this jealousy regarding what constitutes legal problems before some zealot seeks to enjoin all insurance adjusters and medical doctors on the theory that liability and extent of injuries are matters which are sometimes involved in judicial proceedings. Many matters are sometimes the subject of judicial proceedings, but that does not make them the lawyer's exclusive demesne.

We submit that the proper rule is:

1. All judicial proceedings require legal services;

2. Some services never require Court action but should be handled by lawyers because they require *legal* skill or knowledge.

3. Some activities may later require Court action but, if prior to that time they require no legal skill or knowledge, they are not legal services until litigation commences.

Professor Wallace R. Bennett of the University of Utah in a recent article on Non-Lawyers and the Practice of Law before State and Federal Agencies, published in the American Bar Journal (July, 1960 issue, page 705,) states:

> "The problem of unauthorized practice of law is assuming immense importance to the Bar, other professions and the public. * * *"
>
> "The determination of what constitutes the practice of law in a given situation and judgment as to the constitutionality of legislation which affects the practice of law must be expected to reflect consideration for other specialists in matters which bear a relation-

ship to law; it should as well reflect a perceptive understanding of effects on the administration of justice, adequate protection of individuals' legal rights, and on the maintenance of the profession charged with the highest responsibilities of representation."

Federal and State Courts have recognized that accountants and other specialists are competent in many instances to adequately protect individual rights in non-judicial proceedings. See cases cited p. 11 this petition. In Illinois the same activities are sought to be confined to lawyers. This confusion of jurisdiction is not in the best interest of the client who seeks competent and qualified assistance in such things as tax matters.

In resolving this confusion it is submitted that the Courts should consider the needs of the public and the rights of the individual prior to and even to the exclusion of the interests of members of the Bar.

CONCLUSION.

For all of the foregoing reasons, the Petitioners pray this Court grant Certiorari for the purpose of restoring the rights of the Petitioners to a legitimate business which they have worked twenty-five years to build and which they have conducted in the public interest.

Respectfully submitted.

ROBERT J. NOLAN,
Attorney for Petitioners

APPENDIX A.

47719

The Chicago Bar Association, an Illinois corporation, not for profit, Stuart C. Abbey, Mandel L. Anixter, Davis P. Buzane, Richard L. Kahn, John Ligtenberg, John T. Love, John Cadawalder Menk, James T. Mullaney, Curtis F. Prangley, and John A. Watson, Plaintiffs-Appellees, v. Eli Friedlander, Bertha L. Lloyd, Carl F. Lloyd, James J. Prince and Bernard R. Van Harren, d b a Lloyd's Property Owners Association Of Chicago and Lloyd Realty Company, Defendants-Appellants.	Appeal From Superior Court Cook County

Mr. Justice Burke Delivered The Opinion Of The Court.

The Chicago Bar Association and 10 lawyers, individually and as members of the association's Committee on Unauthorized Practice, filed a complaint to enjoin the defendants, who are lay persons, from rendering services alleged to constitute the unauthorized practice of law. The chancellor heard the case upon the complaint, the amended answer and plaintiffs' motion to strike the latter, and he entered a decree in accordance with the prayer of the complaint. Defendants appeal.

The significant elements of the pleadings are expressed in the following quotation from the opinion of the chancellor:

"Defendants conduct their operations as 'Lloyd Property Owners Association of Chicago' and 'Lloyd Realty Company.' The acts complained of relate to their representation of property owners in (1) condemnation proceedings, (2) special assessment proceedings, (3) tax rate proceedings, and (4) proceedings relating to the valuation of real estate for tax purposes. Defendants solicit property owners to employ them to represent such owners in condemnation proceedings. In the course of this solicitation, defendants claim long and successful experience in the handling of such matters and state that 'We have a staff of real estate experts and appraisers who know this type of work and also attorneys with long experience in condemnation cases.' When the solicitation is successful, defendants contract to represent the property owners for 25% of any sum obtained over and above the initial offer. In this contract, the property owner authorizes defendants to select an attorney for him (at an additional expense). 'If it is necessary to have an attorney's services and I do not select an attorney.' Defendants engage real estate experts, engineers and construction experts at the owner expense to assist them in their efforts. 'Where only questions of valuation were involved,' defendants proceed to negotiate for condemnation awards without the services of an attorney. If their own negotiations are satisfactory, an attorney is employed merely for the purpose of filing the owner's appearance; otherwise the attorney works with defendants in further negotiations and proceeds to trial in the case if necessary. Through attorneys retained and employed by them, defendants cause appearances, answers and objections to be filed in courts of record. While it is claimed that such attorneys are 'acting as attorney or attorneys for property owners and not as attorney or attorneys, employee or employees, of these defendants,' it appears that only one licensed attorney has been employed by defendants in recent years to represent all property owners involved in

Defendants maintain that the determination by the Supreme Court on October 22, 1934, in the case of *People ex rel. The Chicago Bar Association et al. v. Clyde F. Lloyd and Frank P. Lloyd, d/b/a Lloyd's Property Owners Association of Chicago*, is a binding adjudication of all the issues in the case at bar, and that the chancellor erred in entering a contrary decree. The charges against the respondents in that case were in all pertinent respects identical with the charges in the instant case. The defendants herein say that they "have succeeded" to the partnership of the respondents in the previous case. The commissioner to whom the case was referred by the Supreme Court reported that the charges against the respondents had not been sustained and recommended the discharge of the rule and the dismissal of the cause. The court disposed of the case by an oral announcement that the recommendations of the commissioner were approved, the rule discharged and the cause dismissed. Defendants in the instant case say that whether the earlier adjudication is to be regarded as *res judicata* barring a second action on the same charge or as estoppel by judgment barring a second litigation, or as *stare decisis* determining the lawfulness and propriety of the services rendered by them, the result must be that the plaintiffs are not entitled to a decree because both cases raise the same issues namely: Does what the defendants are doing constitute the practice of law? Manifestly, the respondents in the cases are not the same. It cannot be said that defendants herein are in "privity" with the defendants in the previous case. If defendants' positions that the relief sought is barred by *res adjudicata* or estopped by judgment cannot be sustained. Our Supreme Court in *In re Easton*, 12 Ill. 2d 25, 28, said that "the unreported *Lloyd* case shall not hereafter be regarded as precedent. * * *." The chancellor was right in deciding that the unreported decision in the first Lloyd

case should not be considered as a precedent to influence the court in deciding the instant case.

Defendants insist that the services they render do not constitute the practice of law. Our courts have condemned the practice of law by collection agencies (*Midland Credit Adjustment Co. v. Donnelly*, 259 Ill. App. 271; *People ex rel. Chicago Discount Corp.*, 279 Ill. App. 70, affirmed 364 Ill. 551; *Smith v. Illinois Adjustment Bureau Co.*, 329 Ill. App. 564), practice by individuals covering real estate and allied transactions (*People ex rel. Illinois State Bar Assn. v. Chicago Bar Assn. v. Schatz*, 404 Ill. 45; *People ex rel. Chicago Bar Assn. v. Tuohy*, 396 Ill. 282), the practice of law by patent agents (*Chicago Bar Assn. et al. v. Kerkhof*, 338 Ill. App. 618), as well as that of banks (*People ex rel. Illinois State Bar Assn. et al. v. People's State Bank*, 344 Ill. 462), and prohibiting (*People ex rel. Chicago Bar Assn. v. Chicago Motor Club*, 362 Ill. 500; *People ex rel. Chicago Bar Assn. v. Motorists Assn. of Illinois*, 354 Ill. 305).

In the *Lester* case, 12 Ill. 2d 250, the court pointed out that the defense of the respondent was that in the unreported *Lloyd* case the court sustained a finding of the special commissioner that the conduct of Lloyd Wolfe was similar to that of Cutsinger, did not constitute the unauthorized practice of law and that the respondent in good faith relied upon the pronouncement of the court in that case. In rejecting this contention the court said: "The facts in the *Lester* case and the *Cutsinger* case are very similar. Each accepted commissions, referred cases [illegible] to an attorney and a division of fees. The *Lloyd* opinion is practically indistinguishable." In *People v. Goodman*, 396 Ill. 330, the court said [illegible]

> ...the practice of law." It has been held that persons acting professionally in legal formalities, negotiations or proceedings by warrant or authority of the clients are engaged in the practice of law. * * * It is argued that the practice by the respondent before the Industrial Commission or before an administrative body, and that the respondent, therefore, is not practicing law because he is not before a court. * * * It is elementary that a great portion of the present day practice of law is conducted outside the court room. * * * The General Assembly has no authority to grant a layman the right to practice law (*In re Day*, *supra*) it follows that any rule adopted by the commission purporting to bestow such privilege upon one not a duly licensed attorney at law, is void. Nor can the General Assembly lawfully declare not to be the practice of law, those activities the performance of which the judicial department may determine is the practice of law. * * * We hold that the court has jurisdiction of the respondent and that the institution of proceedings before the Industrial Commission, and the trial of those causes before the arbitrator and the commission, constituted the practice of law."

In *Parker v. Kirkland*, 208 Ill. App. 340, the court said:

> "While the commission [Industrial Commission] is a board of appeals it is purely an administrative body, and courts of this State have consistently held that reviewing assessments it possesses powers of a quasi judicial nature."

Defendants say that services similar to some of the services performed by them were approved by the Supreme Court in *In re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 30. There are so many differences in the factual situations of the two cases that we do not consider the *Brotherhood* case a precedent for the defendants.

Defendants assert that the decree ought to be reversed because it is so drawn that they cannot ascertain what they are forbidden to do and what, if anything, they may lawfully do, citing *Boston Ice Co. v. Potter*, 123 Mass. 28; *Eastern Dispatch Co. et al. v. Dunham et al.*, 220 Ill. App. 517, 520; *Berwick Lumber Co. et al. v. Carbon*, 247 Ill. App. 248, 249; and *Ensminger & Co. v. McConnell et al.*, 200 Ill. App. 78, 95. In drafting the decree the chancellor followed the language of the *Cuneo* case, 1 Ill. App. 21, 140. We think that the defendants well understand what they are restrained from doing. No part of the decree purports to restrain them from doing anything which does not involve the practice of law.

Because the defendants apparently misapprehend the [illegible] relating to the subject matter of the Supreme Court in [illegible] and following the precedent in the *Bar Association* case, 131 Ill. at 391, we are of the opinion that they should be restrained from [illegible] to the decree of their petition [illegible] and that the decree should be modified to [illegible] from engaging in the services complained of in the December 31, 1927 decree of the Supreme Court [illegible] Cook County [illegible] upon the defendants' [illegible] decree entered [illegible] December 31, [illegible] effect.

Decree Modified. Not Abstracted.

[illegible]

APPENDIX B

UNITED STATES OF AMERICA

State of Illinois
Supreme Court

At a Term of the Supreme Court, begun and held
Springfield, on Monday, the ninth day of May in the ye
of our Lord, one thousand nine hundred and sixty, with
and for the State of Illinois.

Present:

Byron O. House, Chief Justice
Justice Joseph E. Daily
Justice George W. Bristow
Justice Ray I. Klingbiel
Justice Walter V. Schaefer
Justice Harry B. Hershey
Justice Charles H. Davis
Grenville Beardsley, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 17th day of M
1960, the same being one of the days of the term of Cou
aforesaid, the following proceedings were, by said cour
had and entered of record, to wit:

The Chicago Bar Association, an Illinois corporation, not for profit, Stuart C. Abbey, Mandel L. Anixter, Davis P. Bazane, Richard L. Kahn, John Ligtenberg, John T. Love, John Cadwalader Monk, James T. Mullaney, Curtis E. Pharpley and John A. Watson,

Respondents

No. 58810 vs.

Ed Friedlander, Bertha A. Lloyd, Carl F. Lloyd, James J. Prince and Bernard R. Van Harlow, d/b/a Lloyd's Property Owners Association of Chicago and Lloyd Realty Company,

Petitioners

Petition for Leave to Appeal from Appellate Court First District 56 S 21822 47719

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract filed in support thereof, and being now fully advised of and concerning the premises, does overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondents recover of and from the said Petitioners costs by them in this behalf expended herein to be taxed and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 23rd day of May, 1960.

/s/ Mrs. Earle Benjamin Searcy,
Clerk,
Supreme Court of the State of Illinois.

(Seal)

APPENDIX C.

And afterwards to-wit: on the 19th day of May, A.D. 1960, the same being one of the days of the term of court aforesaid, a certain motion for reconsideration of an order denying petition for leave to appeal was filed in the office of the Clerk of the Supreme Court, which is in the words and figures following, to-wit:

APPENDIX D.

(Portions of Complaint Applicable to Board of Tax Appeals Proceedings)

To The Honorable Judges Of The Superior Court, In Chancery Sitting:

1. The plaintiffs are The Chicago Bar Association, an Illinois Corporation, not for profit, Stuart C. Abbey, Mandel L. Anixter, Davis P. Buzane, Richard L. Kahn, John Ligtenberg, John T. Love, John Cadwalader Menk, James T. Mullaney, Curtis F. Prangley and John A. Watson, individually and as members of the Committee on Unauthorized Practice of Law of said Chicago Bar Association.

2. The natral person plaintiffs are attorneys and counsellors at law duly admitted to practice law in all the courts of record in the State of Illinois, and are members of the Committee on Unauthorized Practice of Law of The Chicago Bar Association aforesaid, and as such attorneys and counsellors at law, and by virtue of the franchise granted to each and every one of them, have practiced law in the State of Illinois for a long period of years and maintain offices for such purpose in the City of Chicago, County of Cook, and State of Illinois, and as a result of their individual efforts and activity for several years as attorneys and counsellors at law have each acquired and now have a law practice of great value, and from which they severally enjoy and receive compensation and income.

3. The Chicago Bar Association, of which the individual plaintiffs are members, is a corporation duly organized under the laws of the State of Illinois not for profit,

and has for its purposes, among other things, the establishment and maintenance of the honor and dignity of the courts and of the profession of law, the protection of the public, and the due administration of justice in the courts of the State of Illinois and of the County of Cook, and the function of the Committee on Unauthorized Practice of Law, acting for and on behalf of said The Chicago Bar Association, a corporation, is, among other things, to further and maintain said purposes.

4. Each of the defendants herein, Eli Friedlander, Bertha A. Lloyd, Carl F. Lloyd, James J. Prince and Bernard R. Van Harren, is a partner in a partnership known as Lloyd's Property Owners Association of Chicago and in a partnership known as Lloyd Realty Company. Each of said partnerships maintains an office and a place of business at 139 North Clark Street, Chicago, Illinois. Said defendants, as such partners of Lloyd's Property Owners Association of Chicago, are sometimes hereinafter referred to as the "partners". None of said defendants is licensed to practice law in the State of Illinois, but notwithstanding that fact, each of said defendants as a partner in said partnership, has for a long time been engaged in, and is still engaged in, the practice of law at or from said place of business in Chicago and has solicited, performed, furnished and rendered legal services and advice, and has charged and collected fees for legal services.

23. Each of said Defendants, acting as partners of Lloyd's Property Owners Association of Chicago, has for many years last past circularized and solicited substantially all of the large number of property owners whose names have been accumulated over the past years in the files of said partners and has entered into contracts of employment with many of said property owners in connection therewith; said contracts of employment provide

that said partners will file complaints to the Assessor's valuation of real estate before the Board of Appeals of Cook County, Illinois, and that said partners will receive as payment therefor one-third (⅓) of the amount of any savings in general real estate taxes as a consequence of any reduction in the amount of such valuations; said partners do not employ any attorney to represent the property owners before said Board of Appeals, but prepare and file all complaints against said valuations and appear and conduct hearings before said Board of Appeals in the name of Lloyd's Property Owners Association of Chicago, as agent for said property owners, the details of which are unknown to the Plaintiffs, but which will appear from the books and records of said partners if the same are produced in this honorable court; and Plaintiffs are informed and believe that said partners have collected many thousands of dollars as fees for legal services in connection with said valuation objections and have retained the entire amount thereof for the sole use and benefit of said partners.

28. In respect to each of the foregoing activities in which they are engaged, the Defendants, as partners of Lloyd's Property Owners Association of Chicago, are each engaged in the practice of law without a license and are each guilty of fraudulent imposition upon the Court of the State of Illinois as well as the people of said State.

29. All of the acts, doings and pretenses of the said Defendants, acting as partners of Lloyd's Property Owners Association of Chicago, hereinbefore in this Complaint set forth, are contrary to equity and good conscience, and in contravention of the rights of the Plaintiffs herein who are duly licensed attorneys at law, and are contrary to public policy, and in violation of the laws of the State of Illinois, and not only tend to degrade the legal profession and to bring the same and the administration of justice

and the law in bad repute, but also tend to mislead and defraud the public; if the Defendants herein are permitted to continue the practice of law in manner and form as hereinbefore set forth, irreparable injury and damage will be occasioned to these Plaintiffs, to the public, and to all members of the legal profession, and will be an encouragement to other individuals, firms and corporations to engage and to continue in the unlawful practice of the law, which unlawful practices have increased to an alarming degree during the last few years in the City of Chicago, County of Cook and State of Illinois.

30. Plaintiffs are informed and believe and therefore state the fact to be that said Defendants, acting as partners of Lloyd's Property Owners Association of Chicago, are proceeding with the unlawful practice of law and in other unlawful practices in utter defiance of the laws of this State and the Rules of the Supreme Court and will continue to do so unless enjoined by this Court, all in willful and deliberate disregard for the rights of Plaintiffs, the public and all members of the legal profession.

31. This case is instituted on behalf of the Plaintiffs herein, and all other attorneys at law who may wish to join them, as well as for the benefit of the public and all of the Courts in the County of Cook and State of Illinois; Plaintiffs ask that a permanent injunction be granted herein restraining said Defendants, both individually and as partners in said Lloyd's Property Owners Association of Chicago and of Lloyd's Realty Company, their agents and employees, from circularizing and soliciting of business from persons as aforesaid, from giving legal advice, from performing legal services, from practicing law in any form, either directly or indirectly, from charging and collecting fees for such services and from such other and further relief as the Court may deem meet and just.

APPENDIX E.

AMENDED ANSWER

(Portions Applicable to Board of Tax Appeals Proceedings)

The defendants in the above entitled cause, Eli Friedlander, Bertha A. Lloyd, Carl F. Lloyd, James J. Prince and Bernard R. Van Haren, doing business as Lloyd's Property Owners Association of Chicago and Lloyd Realty Company, for their answer to the Complaint, state to this Honorable Court the following:

1. The defendants admit the allegations of paragraph 1 of the Complaint.

2. The defendants admit the allegations of paragraph 2 of the Complaint.

3. The defendants admit the allegations of paragraph 3 of the Complaint except that these defendants deny that the establishment and maintenance of the honor and dignity of the courts and the protection of the public are among the express corporate purposes of the Chicago Bar Association.

4. The defendants deny that any of them as a partner in said partnership, or otherwise, has ever been engaged in, or is now engaged in the practice of law, and these defendants further deny that they or any one of them has, solicited, performed, furnished or rendered legal services or advice, and these defendants further deny that they, or any one or more of them, have ever charged or collected fees for legal services.

23. These Defendants respectfully show unto the Court that matters handled by these Defendants before the Board of Appeals are handled in non-judicial proceedings and involve only the valuation of property, and do not involve legal questions, and do not require the possession or use of legal skill and knowledge. And these Defendants deny that they have ever received any fees for legal services in connection with such matters. These defendants deny that the valuation of property is the practice of law.

26. These Defendants deny that in connection with the valuation complaints before the Board of Appeals of Cook County, Illinois, they have rendered services requiring the use of legal skill or knowledge and deny that they have rendered legal services or collected legal fees in connection with such matters.

27. These Defendants deny that with respect to matters before the Board of Appeals of Cook County, Illinois, these Defendants or any of them are or have been engaged in the practice of law, and deny that they have been guilty of fraudulent imposition upon the said Board of Appeals or the people of the State of Illinois.

In handling matters before the Board of Tax Appeals these Defendants render the following described services:

(a) Ascertain classification of assessed property on records of the County Assessor. The Assessor's classification of property relates to the physical attributes of the property assessed, such as age, location, kind of construction including materials used, size of lot, size of building, number of rooms finished, number of rooms unfinished, number of fireplaces, presence or absence of garage, basement, features specially affecting obsolescence, etc.

(2) Examine the provisions of the Assessor's Manual with reference to factors affecting the valuation of each parcel of real estate with reference to which these Defendants have been employed to render service.

(3) Obtain from the owner all information necessary to determine whether there are physical facts (and if there are, what they are) that show that the Assessor's classification is unwarranted or that provisions of the Assessor's Manual have been ignored or improperly applied.

(4) A preliminary conference on each complaint filed before the Board of Tax Appeals is had with a Deputy Hearing Officer. At this preliminary conference the property owner, or the Defendants as his agents, set forth his reasons for complaint and the Deputy checks this information against the property card with the Assessor's office has temporarily turned over to the Board of Appeals for purposes of this hearing. If the Deputy determines that information has been submitted which indicates a factual error—that is, an error in the classification, grading, age or unit pricing—he makes a notation in his file for the guidance of the Member of the Board before whom the matter is then taken. If the Complainant seeks a lower assessment on grounds which do not involve factual errors but merely matters of judgment, the Deputy usually takes no action and the matter is merely referred by him to a Member of the Board.

In the Assessor's valuation of more than a million parcels of real estate it is inevitable that questionable determinations and conclusions, and even errors occur.

Grounds upon which classifications have been shown to be faulty or provisions of the Assessor's Manual have been shown to have been overlooked or misapplied, and the tax has been shown to be excessive are: Erroneous classification of a house according to number of rooms without taking into consideration the fact that two rooms were attic rooms and were unfinished; erroneous specifications of the number of fireplaces in a house; erroneous increase of valuation because of addition of frame garage and rooms above it, the addition to the square foot area of the improvements on the land being proper, but the error consisting in failure to credit a corresponding decrease in the unit value per square foot as required by the Assessor's Manual; failure to make adequate allowance for depreciation and obsolescence of improvements, factors affecting both having been underestimated; erroneous assessment of frame addition to brick building at same unit value as the brick portion of the structure; failure to give consideration to absence of a basement; erroneous classification as to number of tiled baths; erroneous classification of shingle-roofed building as tile-roofed building; erroneous classification of houses as "Modern residences" when in fact they lacked many modern features; failure of Assessor's records to reflect changes in marketablity of properties due to new conditions growing up with the passage of time.

In the course of the handling of these matters no legal questions are involved, no services requiring legal knowledge or skill are rendered, and no lawyers are employed. Many of these matters are referred to the Defendants by reputable and competent lawyers engaged in the practice of law in Cook County.

In a recent year these Defendants obtained reductions of taxes on 351 parcels of real estate, their average com-

pensation was $59.43 per parcel, the smallest compensation was $5.03, and the largest was $1,354.22.

28. These Defendants deny that they or any of them are or have been engaged in the practice of law and they deny that they or any of them are or have been guilty of fraudulent imposition upon the Courts of the State of Illinois or upon the people of the State of Illinois.

29. These Defendants deny all the allegations of paragraph 29 of the Complaint.

30. These Defendants deny all of the allegations of paragraph 30 of the Complaint.

31. Further answering these Defendants respectfully show unto this Honorable Court that at the December term, A.D., 1932 of the Supreme Court of Illinois the Chicago Bar Association and the persons who were then its Committee on Unauthorized Practice presented to the Supreme Court of Illinois and filed in said Court a certain information in and by which the Chicago Bar Association and the then members of its Committee on Unauthorized Practice made certain charged against Clyde F. Lloyd and Frank P. Lloyd, doing business as Lloyds Property Owners Association of Chicago, to whose business and partnership the Defendants herein have succeeded, which charges so made against said Clyde F. Lloyd and Frank P. Lloyd were in all pertinent respects identical with the charges made by said Chicago Bar Association and the present members of its Committee on Unauthorized Practice against these Defendants in this case now pending before this Honorable Court. In said information proceeding, said Chicago Bar Association and the then members of its Committee on Unauthorized Practice prayed that said Supreme Court of Illinois might take action which was described in the prayer of said information proceed-

ing in the words and figures following: "Your relators therefore pray that said respondents, Clyde F. Lloyd and Frank P. Lloyd, may be required to make full and correct answer to this information, but not under oath, the answer under oath being hereby expressly waived, and that said respondents may be perpetually enjoined and restrained from engaging in the practice of law in the State of Illinois and from performing either directly or indirectly acts or services for any person or persons whomsoever, similar in character to those hereinbefore alleged, and from soliciting the representation of property owners in special assessment and condemnation proceedings, and from charging and collecting fees, commissions or payments in any form in return for any legal services rendered or to be rendered by said respondents or their attorneys; that said respondents show cause, if any they have, why they should not be punished for contempt of this Court for the commission of the offenses, and each of them, hereinbefore set forth and that such further order or orders may be entered as to this Honorable Court may seem meet.'" Answer was duly filed on behalf of said Clyde F. Lloyd and Frank P. Lloyd, respondents in said information proceeding and said proceeding was referred to the Honorable William A. Doyle, a Master in Chancery of the Circuit Court of Cook County as Commissioner of the Supreme Court of Illinois for the taking of evidence and the submission of his reports and recommendations. The evidence and stipulations introduced before said Commissioner showed the manner in which the respondents in said cause carried on their business, which was the same in which these defendants now carry on the same business. Said Commissioner, upon the conclusion of the hearings before him, rendered his report in which he found that the charges made against

said respondents had not been sustained, and recommended the discharge of the rule and the dismissal of the cause. Thereafter on October 22, 1934, the Supreme Court disposed of the case by the following oral announcement made through its Chief Justice:

> "In this case several motions have been filed. Among them are motions by relator that Charles Leviton be substituted as attorney and that objections to the Commissioner's report stand as exceptions. These motions are allowed.
>
> "There is a further motion by respondents to confirm the Commissioner's report and to discharge the rule. The Court has considered this motion. We find that the facts stated in the Commissioner's report, taken with the stipulations, are sufficient to sustain the findings of the Commissioner. The recommendations of the commissioner are therefore approved by this Court, the rule is discharged and the cause is dismissed."

APPENDIX F.

(None of the Decisions cited therein refer to Board of Tax Appeals Activity)

1. The Defendants in their Amended Answer rely upon an order of the Court entered in the unreported case of *People ex rel. Chicago Bar Association* v. *Lloyd, et al.* No. 21768, in which an order was entered by the Supreme Court on October 22, 1934. That case has since been overruled by implication by the Supreme Court in several cases including *People ex rel. Chicago Bar Association* v. *Chicago Motor Club.* 362 Ill. 50, and *People ex rel. Chicago Bar Association* v. *Goodman,* 366 Ill. 346.

2. That unreported decision was also overruled when the Supreme Court denied leave to appeal in 2 Ill. App. 2nd i, wherein an appeal was prayed from the decision rendered in *Chicago Bar Association* v. *Clausen,* 1 Ill. App. 2nd 140.

3. The defense of *res judicata* is not properly asserted by the Defendants and cannot be raised by them as an estoppel because they are not the same persons as those who were respondents in the unreported case which they rely upon.

4. By opinion filed on September 20, 1957, *In re Luster,* 12 Ill. 2nd 25, the Supreme Court of Illinois definitely overruled the holding of the *Lloyd* case in the unreported decision rendered on October 22, 1934 and held that what the Defendants are engaged in is the unauthorized practice of law.

5. The Amended Answer in substance admits the facts alleged in the Complaint but states that such facts are

insufficient in point of law to sustain the relief prayed for. The opinions heretofore recited in this motion definitely dispose of that contention and the said Amended Answer is insufficient in point of law to present any defense to such relief.

APPENDIX G.

(Portions Applicable to Board of Tax Appeal Proceedings)

The above cause having come on to be heard on the complaint of The Chicago Bar Association, an Illinois Corporation not for profit, Stuart C. Abbey, Mandel L. Anixter, Davis P. Buzane, Richard L. Kahn, John Ligtenberg, John T. Love, John Cadwalader Mank, James T. Mullaney, Curtis F. Prangley and John A. Watson, Plaintiffs, and the amended answer of the Defendants, Eli Friedlander, Bertha A. Lloyd, Carl F. Lloyd, James J. Prince and Bernard R. Van Haren, doing business as Lloyd's Property Owners Association of Chicago and Lloyd Realty Company, Defendants, and on the motion of the Plaintiffs to strike the amended answer of the said Defendants, and that a decree may be entered in accordance with the prayer of the complaint, and the Court having heard arguments of counsel and being fully advised in the premises, doth find, order, adjudge and decree as follows:

1. The Court has jurisdiction of the subject matter and of the parties, and all Defendants have been duly served with process.

2. The motion of the Plaintiffs to strike the amended answer of the Defendants is hereby sustained, and the said amended answer is hereby stricken.

3. The cause of action contained in the Plaintiffs' complaint is meritorious, and the Plaintiffs are entitled to receive the relief prayed for in the complaint.

4. It is further ordered that the Defendants, Eli Friedlander, Bertha A. Lloyd, Carl F. Lloyd, James J. Prince and Bernard R. Van Haren, doing business as Lloyd's Property Owners Association of Chicago and Lloyd Realty Company, and their agents and employees, be and they are hereby permanently restrained and enjoined from:

(1) Directly or indirectly engaging in the practice of law;

(2) Directly or indirectly fomenting or soliciting litigation;

(3) Directly or indirectly performing, furnishing and rendering legal services and advice;

(4) Directly or indirectly charging and collecting fees for legal services;

(5) Rendering and continuing to render legal services in connection with the preparation and filing of complaints to the Assessor's valuation of real estate before the Board of Appeals of Cook County, Illinois, and conducting hearings before said Board of Appeals in connection with said valuation complaints, and receiving fees for their services in the representation of property owners before the Board of Appeals.

APPENDIX H.

RULES OF THE BOARD OF APPEALS OF COOK COUNTY

RULE 10:

All complaints must be made on the official forms prescribed and furnished by the Board of Appeals. The taxpayer complainant shall personally sign the complaint and verify the same under oath. Both copies of the complaint must be so signed and verified. All information required to fully complete the official complaint form shall be furnished by the complaining taxpayer. Incomplete complaint forms shall not be accepted for filing.

RULE 11:

An attorney or agent of a taxpayer may file, but not sign, a complaint of behalf of a taxpayer and represent the taxpayer at the hearing thereon. An attorney shall file his appearance at the time the complaint is filed and an agent shall file a power of attorney at the time the complaint is filed. The appearance or power of attorney shall be on the forms prescribed and furnished by the Board.

RULE 12:

Every complainant shall appear for the hearing upon his complaint on the date and at the hour set by the Board and shall be prepared to furnish any information the Board may require. Every complainant must appear personally or by his attorney or by his duly authorized agent. Failure to appear on the date and at the hour set by the Board shall be sufficient cause to dismiss the complaint. No continuances shall be granted except for good cause shown and the only on order of the Board.

RULE 14:

Real Estate complaint forms, land value complaint forms, exemption complaint forms, personal property complaint forms, personal property balance sheet forms, attorney's appearance forms and agent's power of attorney forms as prescribed by the Board shall be available at the offices of the Board. Only the prescribed forms furnished by the Board may be used.

ILE COPY.

Office Supreme Court, U.S.
FILED
SEP. 15 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960

No. 325

ELI FRIEDLANDER, BERTHA A. LLOYD, CARL F. LLOYD, JAMES J. PRINCE and BERNARD F. VAN HARREN, d/b/a LLOYD'S PROPERTY OWNERS ASSOCIATION OF CHICAGO and LLOYD REALTY COMPANY,

Petitioners,

vs.

THE CHICAGO BAR ASSOCIATION, an Illinois Corporation, not for profit, STUART C. ABBEY, MANDEL L. ANIXTER, DAVIS P. BUZANE, RICHARD L. KAHN, JOHN LIGTENBERG, JOHN T. LOVE, JOHN CADWALADER MENK, JAMES T. MULLANEY, CURTIS F. PRANGLEY, and JOHN A. WATSON,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

JOHN LIGTENBERG
134 North LaSalle Street
Chicago 2, Illinois

J. RUSSELL CHRISTIANSON
111 W. Washington Street
Chicago 2, Illinois
Attorneys for Respondents

CHICAGO LAW PRINTING CORP., 189 W. MADISON, CHICAGO FRanklin 2-4521

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Petitioners,

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THE CHICAGO BAR ASSOCIATION, an Illinois Corporation, not for profit, STUART C. ABBEY, MANDEL L. ANIXTER, DAVIS P. BUZANE, RICHARD L. KAHN, JOHN LIGTENBERG, JOHN T. LOVE, JOHN CADWALADER MENK, JAMES T. MULLANEY, CURTIS F. PRANGLEY, and JOHN A. WATSON,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now John Ligtenberg, as attorney and solicitor for the respondents (himself included) and says that a writ of certiorari should not be granted for the following reasons:

1. There is no special or important reason therefore, as required by Rule 19 of this Court.

2. The petitioners in the Court below raised no question under the Federal Constitution and the matters there presented were not within the contemplation of Rule 19.

It shall be our purpose to support these two propositions as concisely as possible.

1. The Proceedings Below.

This case originated in the Superior Court of Cook County, Illinois, a court of general original jurisdiction. The plaintiffs, the Chicago Bar Association, and certain members of the Committee on Unauthorized Practice of that association commenced a chancery action seeking to enjoin the defendants (who are the petitioners here) from doing certain acts alleged to be the unauthorized practice of law. These acts were essentially the representation of property owners in four kinds of proceedings:

(1) Condemnation proceedings,
(2) Special Assessment proceedings,
(3) Tax Rate proceedings, and
(4) Proceedings relating to the valuation of real estate for tax purposes.

The petitioners were actively engaged in these matters though they were not licensed to practice law. They solicited property owners to employ them in such matters mostly on a contingent fee basis, claiming long and successful experience (Abst. 1-32), and that they employed a staff of real estate experts, appraisers and attorneys to assist them where necessary.

The amended answer denied that the defendants did anything that amounted to the practice of law but described their activities in considerable detail. They also pleaded that they were protected by an unreported 1934 decision

of the Illinois Supreme Court, which is described in detail in the petition for writ of certiorari, pp. 6-8.

However, the amended answer raises no state or federal constitutional question and no Federal question in any form (Abst. 33-59).

The cause was heard and determined on the motion of plaintiffs to strike the amended answer and a decree for a permanent injunction was entered.

An appeal was then taken to the Illinois Appellate Court, a tribunal which has no jurisdiction of constitutional questions. Had the petitioners raised a question under the State or Federal Constitution their appeal would have lain direct to the Supreme Court of Illinois. Illinois Civil Practice Act, Section 75. Ill. Rev. St. (State Bar Ed.) 1959, Chapter 110, Section 75, which in part follows:

> "(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which * * * a construction of the constitution is involved."

The opinion of the Illinois Appellate Court, 24 Ill. App. 2nd 130, affirmed the decree below and mentioned no Federal question.

The petition for leave to appeal to the Supreme Court of Illinois was denied May 23, 1960, without opinion. The petition itself raised only state questions. These were:

1. That the decree conflicts with earlier decisions of the Illinois Supreme Court, including the so-called first Lloyd's case.
2. The defendants were not guilty of the unauthorized practice of law.
3. The opinion and decree below allow discrimination between adversaries.
4. The Appellate Court ignored the principles of *Res Judicata*, Estoppel by Judgment and *Stare Decisis*.

An inspection of the entire proceedings in the courts of Illinois does not disclose that any Federal question was raised at any time. The entire case was obviously conducted on the theory that no constitutional question, state or federal, was involved.

2. The Activities of Petitioners.

Since the above may not disclose adequately the nature of the activities enjoined by the decree we quote here a summary statement adopted by the Appellate Court of Illinois. The statement is changed only by paragraphing it for easier reading. Its source is the opinion of the trial court chancellor (Abst. 63-65). *'Chicago Bar Association et al* v. *Friedlander*, 24 Ill. App. 2nd, 130:

> "Defendants conduct their operations as 'Lloyd's Property Owners Association of Chicago' and 'Lloyd's Realty Company'. The acts complained of relate to their representation of property owners in (1) condemnation proceedings, (2) special assessment proceedings, (3) tax rate proceedings, and (4) proceedings relating to the valuation of real estate for tax purposes.
>
> "Defendants solicit property owners to employ them to represent such owners in condemnation proceedings. In the course of this solicitation, defendants claim long and successful experience in the handling of such matters and state that 'We have a staff of real estate experts and appraisers who know this type of work and also attorneys with long experience in condemnation cases.' When the solicitation is successful, defendants contract to represent the property owners for 25% of any sum obtained over and above the initial offer. In this contract, the property owner authorizes defendants to select an attorney for him (at an additional expense); 'If it is necessary to have an attorney's services and I do not select an attorney.' Defendants engage real estate experts, engineers and construction experts at their own expense to assist them in their efforts. 'Where only questions of valu-

ation were involved', defendants proceed to negotiate for condemnation awards without the services of an attorney. If their own negotiations are satisfactory, an attorney is employed merely for the purpose of filing the owner's appearance; otherwise the attorney works with defendants in further negotiations and proceeds to try the case if necessary. Through attorneys retained and employed by them, defendants cause appearances, answers and objections to be filed in courts of record. While it is claimed that such attorneys are 'acting as attorney or attorneys for property owners and not as attorney or attorneys, employee or employees, of these defendants', it appears that only one licensed attorney has been employed by defendants in recent years to represent all property owners involved in condemnation matters.

"The practices followed by defendants in assessment matters parallel their operations with respect to condemnation cases: solicitation based on a claim of long and successful experience; a contingent fee contract authorizing defendants to select an attorney for the property owners; the employment of engineers or real estate experts by defendants at their own expense; the employment of an attorney (at an added expense to the property owner) to file and prosecute objections to the assessment. Again it appears that in recent years only two licensed attorneys have been employed by defendants to represent all property owners in special assessment matters.

"With respect to the contesting of tax rates, defendants circularize and solicit substantially all of the property owners whose names they have accumulated over the years and enter into contingent fee contracts of employment to arrange for the payment of taxes under protest and to file and present objections to the tax rate. They file a letter of protest prepared by their attorney, on behalf of such property owners, and employ an attorney to file and prosecute objections to the rates on behalf of such owners.

"Defendants' operations with reference to valuation of property for tax purposes are substantially the same as in the other three fields.

"Defendants have emphasized that their services relate to questions of valuation only, are confined to preparatory work, and that they do not appear in court. Certainly the practice of law is not confined to the courtroom. Nor can defendants take refuge in the fact that their work may be said to be preparatory in nature. The fact is that all of their operations were in connection with matters that ultimately lead to court proceedings or proceedings before an administrative body. Their letters of solicitation make it perfectly clear that their services include those to be performed by an attorney. The preparation of cases for trial and negotiation directed to out-of-court settlements are an integral part of the typical lawyer's work."

3. Scope of the Petition For Writ of Certiorari.

Of the four types of activities enjoined by the decree below this petition relates only to the last:

> Proceedings relating to the valuation of real estate for tax purposes.

The petitioners have apparently acquiesced as to the other three, or have now consented that these activities amounted to the practice of law. The basis of their contention seems to be that tax valuation matters are handled in non-judicial proceedings and that the courts of Illinois erred in finding that appearance in real estate valuation cases constitutes the practice of law. This seems to the respondents palpably and solely a state question.

The petition for certiorari (page 7) states that the issues in the first Lloyd's case "*were in all pertinent respects identical* with the charges made in the present case." (The emphasis is theirs). It seems inconsistent for them to

admit now that the 1934 decision of the Illinois Supreme Court does not protect them with respect to condemnation, special assessment and tax rate matters but may still shield them in valuation cases. Do they admit by this that the Illinois courts are competent to decide that some things are the practice of law but that they are incompetent as to others?

4. The Question of Jurisdiction.

Jurisdiction of this Court is claimed on the basis of Title 28, USCA Section 1257 (3).

5. Questions Presented.

(1) Has the petitioner raised any right, title, privilege or immunity under the United States Constitution?

(2) If a federal question is involved, has it been raised in a timely manner, if presented in this court for the first time?

(3) Will the Supreme Court of the United States take jurisdiction of a decree involving a question solely and peculiarly of state law?

ARGUMENT.

I.

The petitioner has not set up any right, title, privilege or immunity under the Federal Constitution.

Nowhere in the proceedings in any of the Illinois State courts did the petitioners contend that any part of the Federal Constitution had been violated.

The Judicial Code, USCA, Title 28, Section 1257 (3), provides that it shall be competent for the Supreme Court of the United States by certiorari to certify for review any final judgment or decree of the highest court of a state court, where "any title, right, privilege or immunity is specially set up or claimed under the constitution * * *" Since no such right is set up or claimed, there is nothing for this Court to review.

It is significant that the petitioners do not argue specifically in their petition for certiorari that their activities are not the practice of law. While they sometimes call their activities a "business" (Petition p. 12) they find themselves unable to describe their activities without using words and phrases peculiar to the practice of law.

On page 11 they speak of their right to practice. On page 12 they mention "351 separate hearings conducted by them", "rules of procedure", "clients", and "representation". On page 13 they expand upon their "knowledge of state taxation", surely an extremely complicated legal subject. These are merely a few examples plucked from their argument.

They rely solely on the 1934 opinion of the Illinois Supreme Court that their "business" in tax valuation cases

is not the practice of law. Inconsistently, they apparently concede that the earlier opinion was wrong about the other phases of their business. They have not ventured to explain why the decree enjoining them from practicing in condemnation, special assessment and tax rate matters presented only a state question while the injunction against their tax valuation work did present a Federal question.

As a matter of law, the entire decree, including the portion here attacked is based on adequate state grounds. This Court has refused jurisdiction where the decision of the state court is referable to readily available and adequate state grounds. *Durley* v. *Mayo*, Fla. 1956. 76 S. Ct. 806, 351 U.S. 277, 100 L. Ed. 1178, re-hearing denied 77 St. Ct. 22, 352 U. S. 859, 1 L. Ed. 2nd 69.

It has always been conceded that the practice of law and what constitutes such practice is peculiarly a state question. In *Mitchell* v. *Greenough*, 100 F. 2d 184, the Court said (p. 185):

> "We pause here to observe that the right to practice law in the state court has been held by the Supreme Court not to be a privilege granted by the Federal Constitution or laws. *Bradwell* v. *State of Illinois*, 16 Wall. 130, 21 L. Ed. 442; *Ex parte Lockwood*, 154 U.S. 116, 14 S. Ct. 1082, 38 L. Ed. 929. In *Green* v. *Elbert*, 8 Cir., 63 F. 308, the Circuit Court of Appeals held that the conspiracy to deprive a lawyer of his right to practice law in the state courts was not a conspiracy to interfere with any right or privilege 'granted, secured or protected by the Constitution of the United States.'"

In *Central Land Company* v. *Laidley*, 159 U. S. 103, this Court said (p. 112):

> "When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of

law, within the Fourteenth Amendment of the Constitution of the United States."

It is apparent from the opinion of the Illinois Appellate Court in this case, 24 Ill. App. 2nd 130, Appendix A of Petition, that the decree for injunction, as applied to practice before the board of tax appeals in valuation cases, is well within the frame work of Illinois case law on the subject. The many cases cited by the Appellate Court constitute the leading body of law in the United States on the subject of unauthorized practice.

There can be no property right in the practice of law. No layman can gain a vested right to practice. This statement is not contradicted by *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, or *Konigsburg* v. *State Bar of California*, 353 U. S. 252.

At any rate these cases do not apply here because petitioners do not claim the right to practice law, but on the contrary claim their work is not such practice.

The fallacy of petitioners is simply this: The practice of law is not a business. A license to practice law is not a property right; it is a privilege. Even if it be said that the privilege was extended to the respondents in the first Lloyd's case in 1934, the Illinois Supreme Court has never given any such privilege to the petitioners. The right to practice law cannot be inherited or assigned. There is, by definition, no property right in a privilege. *People* v. *Chicago Motor Club*, 362 Ill. 50; *People* v. *People's Stockyards Bank*, 344 Ill. 462.

These Illinois holdings are fully sustained by the pronouncements of this Court. In *In re Isserman*, 345 U. S. 286, this court said:

> "There is no vested right in an individual to practice law. Rather there is a right in the Court to pro-

tect itself, and hence society, as an instrument of justice."

Even in disbarment cases, this court has found no issue of Federal due process, apparently on the basis that state procedures were adequate. *Selling* v. *Radford*, 243 U. S. 46; *McCallum* v. *Board of Managers of Chicago Bar Association*, 326 U. S. 689; *Ex Parte Wall*, 107 U. S. 265; *People ex rel Chicago Bar Association* v. *Tinkoff*, 399 Ill. 282, certiorari denied 334 U. S. 833; *Tinkoff* v. *United States*, 212 Fed. 2nd 18.

It would seem to be beyond dispute that no real substantial Federal question has been presented by the petitioners.

II.

Even if there is a Federal question in the case it has not been raised in a timely manner or in such a way that it will be considered by this Court.

An inspection of the record shows that the petitioner in the court below raised no question under the federal constitution. The amended answer to the complaint in the trial court is completely devoid of any tender of an issue involving the federal constitution. No federal question was raised or even hinted at in the Appellate and Supreme Court of Illinois. Had any constitutional question been present, petitioner could have appealed direct to the Supreme Court of Illinois, hence it is obvious that the raising of a federal question here is an after-thought.

In order to meet the jurisdictional requirement of this Court, petitioners in their argument (Page 14 of the Petition) suggest that Res Judicata is a principle of law which is part of due process, and litigants are entitled to have it recognized, whatever that statement means. It is not clear

whether petitioners are suggesting that Res Judicata is a different kind of defense to that of any other kind, such as the Statute of Limitations or payment, which would make this defense so privileged under the Constitution of the United States, that an erroneous refusal to recognize it would *ipso facto;* give this court jurisdiction. Petitioners cite no authority to support this unusual legal proposition, nor, in our opinion, can they. They then proceed to argue that if this defense, as opposed to any other kind of defense, is interposed in a trial court and is overruled, which action is subsequently sustained by the Appellate and Supreme Courts in the State of Illinois, this, for the first time, raises a constitutional question. There is nothing unique or different about the plea or defense of Res Judicata which permits of this construction. The statement of the Supreme Court of Illinois in *In Re Paus' Estate*, 385 Ill. 550, seems particularly appropriate:

> "We have repeatedly stated that the Constitution does not guarantee that the courts shall not commit error in the trial of causes, and is not a guaranty against erroneous or unjust decisions by courts which have jurisdiction of the parties and the subject matter. If errors are committed, or erroneous decisions rendered, they may be corrected in the manner provided by law for the correction of such errors, but mere errors in a judgment or decree do not deprive the losing party of due process of law. *McIlvaine* v. *City Nat. Bank & Trust Co.*, 371 Ill. 565, 21 N.E. 2d 737; *Foreman-State Nat. Bank* v. *Sistek*, 358 Ill. 525, 193 N.E. 513. A constitutional question is not involved, so as to give this court jurisdiction of a direct appeal, where the judgment or decree is assailed on the ground that its enforcement will deprive the person against whom enforcement is sought, of his property without due process of law. The question in such case is the validity of the judgment or decree and not the constitutional question. * * *

> "It is the duty of this court to determine whether it has jurisdiction, but the growing practice of bringing cases directly to this court upon the pretense that a constitutional question is involved, when the only matter in controversy is that the trial court has rendered an unjust or erroneous decision, is not approved."

The petitioner cannot raise federal questions here when he did not raise them in the Supreme Court of Illinois. *Hulbert* v. *Chicago*, 202 U.S. 275, 50 L. ed. 1026. It may be suggested that *Schware* v. *Board of Bar Examiners*, 353 U.S. 232 is a case where the federal question was raised for the first time in this court. However, in this case the Supreme Court of New Mexico was the court of original jurisdiction and its judgment denying a license to practice law was the point at which a federal question arose.

In *Konigsburg* v. *State Bar of California*, 353 U.S. 252, the federal question was raised in the Supreme Court of California which was the case of original jurisdiction.

There is no reason in law for permitting the petitioners to come into this court on a federal question which is purely an afterthought and in addition has no substantial foundation.

III.

The Supreme Court of the United States will not take jurisdiction of a State Decree involving a question solely and peculiarly of State Law.

The decisions of the courts of review of the State of Illinois on the unauthorized practice of law have been consistent, unequivocal and firm. They comprise the leading body of law in this country on this subject. They indicate that the courts of Illinois have taken a stand in the interest of the public as well as the profession.

The ~~respondents~~ petitioners seek to take refuge in the fact that the practice in tax valuation cases is before an administrative tribunal and that such practice does not amount to the practice of law. However, the Supreme Court of Illinois has long ago taken a position on this question and this stand has been consistently followed since.

In *People ex rel. Chicago Bar Assn.* v. *Goodman*, 366 Ill. 346, the Illinois Supreme Court held (p. 352):

> "It is urged that the practice by the respondent before the Industrial Commission is before an administrative body, and that the respondent, therefore, is not practicing law because he is not before a court. * * * It is elementary that a great portion of the present day practice of law is conducted outside the court room. The respondent urges that because the legislative act relating to the Industrial Commission grants to that body the right to promulgate rules governing the procedure before it, and the commission has adopted a rule permitting a party to appear before it by his attorney or 'agent,' that he, as agent of the claimant, may lawfully appear before the commission as the representative of the client and try his claim there. Even though the Industrial Commission is merely an administrative body, yet, if what the respondent did for a fee, in the presentation of and hearing of a petitioner's claim before that body, amounted to the practice of law, a rule of the commission purporting to grant him that privilege is of no avail to him. The General Assembly has no authority to grant a layman the right to practice law. (*In re Day, supra.*) It follows that any rule adopted by the commission, purporting to bestow such privilege upon one not a duly licensed attorney at law, is void. Nor can the General Assembly lawfully declare not to be the practice of law, those activities the performance of which the judicial department may determine is the practice of law."

The case of *Chicago Bar Assn.* v. *United Taxpayers of America, et al.*, 312 Ill. App. 243, also covers practice before an administrative body, *i.e.*, the Department of Finance.

Illinois courts of review have condemned the practice of law by collection agencies (*Midland Credit Adjustment Co., et al.* v. *Donnelley*, 219 Ill. App. 271; *People* v. *Securities Discount Corp.*, 279 Ill. App. 70, affirmed, 361 Ill. 551; *Smith* v. *Illinois Adjustment Finance Co.*, 326 Ill. App. 654), practices by individuals covering real estate and allied transactions (*People ex rel. Illinois State Bar Assn. and Chicago Bar Assn.* v. *Schafer*, 404 Ill. 45; *People ex rel. Chicago Bar Assn., et al.* v. *Tinkoff*, 399 Ill. 382), the practice of law by a patent agent (*Chicago Bar Assn., et al.* v. *Kellogg*, 338 Ill. App. 618), as well as that of banks (*People ex rel. Illinois State Bar Assn., et al.* v. *People's Stock Yards Bank*, 344 Ill. 462), and motor clubs (*People ex rel. Chicago Bar Assn.* v. *Chicago Motor Club*, 362 Ill. 59; *People ex rel. Chicago Bar Assn.* v. *The Motorists Assn. of Illinois*, 354 Ill. 595).

The principles as laid down in those cases permit of no exception here.

The mere fact that a state court has rendered an erroneous decision on a question of state law, moreover, or has overruled principles or doctrines established by previous decisions on which a party relied does not give rise to a claim under the Fourteenth Amendment or otherwise confer jurisdiction on this court because of the presence of a federal question. *Brinkerhoff* v. *Hill*, 281 U.S. 673, 680.

In the case of *Sunray Oil Co.* v. *Commissioner of Internal Revenue*, 147 Fed. 2d 962, it was held that there is no vested right in the decisions of a court and a change of

decision does not deprive a litigant of the equal protection of laws or take his property without due process of law. A federal question is not raised because a court overruled a prior decision. Certiorari was denied by this court *Sunray* v. *Comm'r of Internal Revenue*, 325 U.S. 861.

From these authorities it is apparent that the decree below was well within the established body of Illinois case law, making the activities of the respondents clearly and palpably the unauthorized practice of law. The permanent injunction decreed by the state court was easily predictable. The respondents were accorded a full and extended hearing and "due process" was abundantly accorded to them.

CONCLUSION.

We accordingly submit that this case presents no federal question of which this court will take notice, and that certiorari should be denied.

Respectfully submitted,

JOHN LIGTENBERG
Attorney for Respondents

J. RUSSELL CHRISTIANSON
General Counsel,
Chicago Bar Association,
also appearing for
Respondents.